

¶ We have given up much of our own space for a week or two past, to our correspondents, and Legislative proceedings. We shall soon be through with the Legislature at least, and shall then have more room for our own articles. There are several matters upon which we wish to touch, but we shall wait till we get more "elbow-room."

### OUR NEW BANNER.

If, in the language of Keats, "A thing of beauty is a joy forever," our citizens have certainly great reason to rejoice under the folds of our beautiful new flag, which was proudly unrolled upon the breeze on New Year's morning. It reflects credit both upon the patriotism and good taste of our citizens, and is worthy of the spirit that produced it. "Long may it wave."

### MR. OTERO'S DEFENSE.

We publish this week, in English, the address of Mr. Otero, to his fellow-citizens in relation to his recent ejection from his seat in the House of Representatives. The Spanish we did not get in time for this week's paper, but it will be published in pamphlet form early next week, and will appear in our next paper. We deem it but a matter of common justice to Mr. Otero to publish his defense as he was not allowed to make it where, appropriately, it ought to have been made—in the House. To our mind the proceedings in this case were not only exceedingly irregular and unparliamentary, but a flagrant violation of law and justice, both of which demand that even a criminal shall have a fair and impartial trial before conviction.

Not only are all acts either right or wrong in themselves, but there is a right and wrong way of doing even a right act, and no man, nor set of men, can be justified in doing a right act by wrong means. If Mr. Otero was not legally entitled to his seat, there was a legal and right way of showing it. If those who desired to eject him, were conscious and confident that they had sufficient legal evidence to do so, why not put the matter upon fair trial, and abide a fair issue? They knew they had a majority, at all events, sufficient to secure them against any attempt, on the part of Mr. Otero or his friends, to take any undue advantage, even had such a thing been meditated by them. Why, then, evade the testimony? Whatever may have been the motive, the thing looks suspicious, to say the least of it, on its face. It looks as if they had pre-determined to eject Mr. Otero, at all hazards, but were afraid to let the testimony be produced, or a defense made, lest their decision in the case should be placed in such a light before the community as to bring a reaction upon themselves. Such, we think, will be the construction that most people will put upon their act.

But we suppose Mr. Otero is willing to trust his case in the hands of his constituents, and we have no doubt they will make such a decision upon it as will satisfy Mr. Gutierrez as to their opinion of the merits of the contest. Mr. Otero has made too good a defense of his own case to require any thing additional from us; we shall, however, have something more to say to our Spanish readers upon this subject, next week.

### NO RESPECT OF PERSONS.

Bishop Lamy, of this city, we are informed, was robbed of a considerable amount of money, a few nights since, by some person or persons, unknown. It would seem that the light-fingered gentry are determined to bleed the Bishop pretty freely, as this is the second or third time, we believe, that we have heard of his having been lauded since he first came to this Territory. These predatory excursions upon the domains of the Bishop, together with the robbery of the Methodist Chapel last summer, seem to indicate that gentlemen of that profession are not at all particular about the character of their victims. We advise the Bishop and all others to do as we do—keep no money.

### Mr. Otero's Defence.

FELLOW-CITIZENS.—As a member elect to the Legislative Assembly of the Territory of New Mexico, by the qualified voters of the county of Valencia, I received a certificate of election, and took my seat as such a member, upon the first day of the session, and proceeded in the discharge of my duties until the 31st of December—the Legislature having been in session twenty-six days.

On the 24th of December, Rafael Gutierrez presented a petition to the Legislature, praying that I might be ejected from a seat in the said Legislature, on the grounds that I was not legally qualified to hold said office, on account of not being of sufficient age; and claiming the seat for himself, upon grounds which I am unable to perceive; not alleging that he had the majority of the qualified voters of the said county of Valencia.

The Legislature took the said petition into consideration, and without pursuing the usual, customary and legal course in such matters, refused to refer the said petition to the proper committee, and by such refusal, denied me the right to be heard in defence by counsel or testimony; and in this extraordinary and summary mode of proceeding, have denied to me a seat in the legislative body.

Thus, the safe guards thrown around us for the protection of the rights guaranteed to us under the laws, have been trampled under foot, and right has been made to give way to might.

That I am right in this, let us examine the law prescribing the mode of contesting the right of a member to his seat in the legislative body. See Laws of the Territory, page 212, from section 54 to section 62 inclusive. By reference to the above law it will be seen, "that any candidate from any county or district, who desires to contest the right to a seat of any representative, said person shall give written notice, within thirty days after the returns are received by the Secretary of the Territory. The notice shall specify the grounds upon which the illegality is founded, and the names of the justices of the peace before whom it is proposed to take the depositions, together with the time and place for taking the same. And when both parties shall meet, at the time and place appointed for taking said depositions, they shall, unless otherwise provided, select a third justice of the peace to aid in taking said depositions." Sec. 62 of the said law, provides that no other testimony shall be received by the Territorial Legislature, touching the contestation of the seat of a member, unless it has been taken in the mode or manner prescribed above.

But notwithstanding all this, your Legislature has proceeded to pass upon it, and actually have decided that I am not entitled to a seat in said Legislature upon the ex-parte showing of said Gutierrez,—upon his petition alone, without a particle of legal testimony to sustain it. And I do here positively assert that no testimony, taken by any justice of the peace, as prescribed by law, was presented to the Legislature for its consideration. But alone, upon the showing of the said Gutierrez, have my rights to a seat, as a member of that body, been passed upon.

If these proceedings are to be upheld and sustained, what security or guaranty have the people of this Territory in any one of their rights as citizens? If the laws are to be trampled upon for party or selfish purposes, we may bid adieu to all our rights as citizens of a free and independent Government.

Let us examine the cause that I am induced to believe produced this extraordinary and summary proceeding by your Legislature in relation to my case. Was it for the public good, or for selfish purposes that I was thus summarily ejected from my seat? From the commencement of the session until the day of my ejection, (and I trust that I shall be borne out by the records,) my every act and every intention was for the interest of the Territory, unbiassed by party, and unprejudiced by selfish ends. But it was evident to a portion of the members of the Legislature that I could not be made a party-tool to serve them in their selfish ends; but that I had independence, and dared to act upon that independence.

But what, fellow-citizens, I ask, has been the principal cause of my thus being ejected from my seat in your Legislative body? Was it, as asserted by the majority of the members of said Legislature, that I was disqualified because of not having the age necessary to hold said office? or was it that I was too old to connive at their unprincipled acts? Was it because I was independent and dared to act upon that independence, or was it that I would not be made a tool

for party or selfish ends? All these contribute to the cause, it is true, but are not the principal cause that induced a portion of the members to labor so ardently to turn me out. The main cause was this: At the commencement of the session and during the election of officers for the House, a clerk was nominated, elected, and sworn in to serve, whom we afterward discovered had been found, by indictment before a grand jury, for larceny, and under bail of \$1000 to appear at the next term of court. Learning this, and knowing it to be a dishonor to the dignity of that body to keep that officer in it, I drafted a resolution declaring his office vacante. This resolution brought on much discussion in the House between several members on both sides. I was an humble member of many, at that time, who advocated the credit, the dignity, and the honor of the body,—I voted to eject the clerk from his office. No sooner was his seat vacant than a meeting was held among several of the members for the purpose of contesting my right to my seat, and at that meeting they resolved to send for Gutierrez to contest my right to a seat in that body.

For advocating the dignity and honor of your Legislature, fellow-citizens, was I turned out. That was the principal cause, and that the crime for which it was necessary to trample law, right, and justice under foot.

"The head and front of my offending has this extent, no more."

It is for this, fellow-citizens, that I have been thus treated by your Legislature. Why was not Gutierrez here at the commencement of the session to contest my seat? Why, after twenty-six days of the session had past, did he make his appearance in this city, to dispute my right to that seat, and this after he had notified me that he would not contest it? It is evident that the contestation is not the work of Gutierrez nor of the good people of the county of Valencia, but of certain officious members of the Legislature who had no further interest in the matter than that I should be turned out to make place for one whom they thought would be more subservient.

I wish that I could in truth and sincerity say, that those who have been thus officious, and thus regardless of law, and the forms of law, were actuated by pure, honest, and worthy principles.

I wish for the sake of my countrymen, that I could impute to them better motives.—Their acts in regard to my case—the overriding and trampling under foot the laws provided in cases of contested elections—and the mode in which I was turned out by a majority of the Legislative Assembly, shows you, fellow-citizens, who you have for your Legislators; and the question will hereafter be submitted to you, whether you will sustain and send men to the Legislature to make laws for you, who over-ride every principle of law themselves to accomplish their selfish objects. There are a portion of the members of that body, that I with pleasure and in justice to them, except from the charges above made; who desired that I should have the right to be heard in defence; who desired that I should only be entitled to those rights that the laws of my country gave me. But their pleadings, in behalf of law and justice, was spent in vain before a majority, who bent upon accomplishing their object to oust me from a seat no matter whether there was proof or not that I was qualified or disqualified from holding my seat. I do not complain that I have been ejected from my seat in the Legislative body. I do not complain that I have been sacrificed for party and selfish ends—that I have been led to the block because I would not be a party tool. But I do complain that to accomplish this object, the laws of my country have been violated—that the right to be heard in defence, which is not even denied to criminals in free and enlightened governments, was denied me. And I say to the majority of that body, that they have been amongst the first to violate their own laws—that they have set a precedent which will not be soon forgotten, and may at some future day fall heavily upon their own heads. And I say to them that by the violation of this law—the wound inflicted upon the statutes—they have left a

stain upon the floor of the Legislative Hall that will not be soon wiped out.

What would one of these Legislators say, if to-morrow he were accused of Treason, upon an ex-parte showing of some individual who asserted and had the certificate of some other person that he had heard the said Legislator use treasonable words, if upon this showing alone, without being allowed witnesses and counsel for his defense he should be put upon trial for his life? He would exclaim that the worst tyranny and despotism that could exist, had been applied to him.

This is the tyranny and despotism that has been applied to me, and these are the things that I complain of. For you, Fellow-Citizens, I felt it to be my bounden duty to make these things public, and to you all these things must be referred for correction.

The seat in the Legislature of New Mexico was not of my seeking. The people of Valencia County, where I was born, desired that I should represent them. I felt my inexperience and inability to do them justice, but in obedience to their call, and their wishes, I was willing to bring whatever talents I possessed, as well as industry and zeal, to bear for their interests, as well as for the common interests of the Territory.

These are the principles by which I have been actuated, and motives that have governed me.

To you, Fellow-Citizens, of Valencia County, I submit these things, and ask if you are satisfied patiently to yield to these unjust and illegal proceedings, by which I have been deprived of my seat, and you of one of your Representatives. With your decision I am content.

MIGUEL ANTONIO OTERO.  
Santa Fe, January 8, 1851.

### Legislative Assembly.

### HOUSE OF REPRESENTATIVES.

The proceedings of the House after 9 o'clock on the night of the 22d and until 4 o'clock in the morning of the 23d, were characterized by much confusion and irregularity. The House frequently in the series of voting, reversing its own acts and decisions. A motion was finally carried, that all subsequent motions be cut off, and that the main question be put on the motion of Jose E. Ortiz, making it an offence finable in a sum not less than \$5 nor more than \$15, for any member to introduce any measure for the purpose of delaying the action of the House.

Mr. Wheaton and others exposed the irregularity of this motion, showing that it was repugnant to all parliamentary rules. Messrs C. Ortiz and F. Pino supported it. But the main question was stayed off till the hour of adjournment, 10 minutes after 4, Wednesday morning.

Wednesday, Dec. 29—10 A. M.  
House met and adjourned, no quorum being present, till 2 P. M.

House met at 2 P. M.; not being a quorum, adjourned to Thursday morning at 10 o'clock.

Thursday Dec. 30—10 A. M.  
House met; reading of the Journal dispensed with. On motion of Mr. Tuley, the Clerk was allowed further time to make up the Journal of Tuesday's proceedings.

Mr. Tuley moved to take up the memorial to Congress on the subject of education, out of its order. Mr. Wheaton moved to refer the memorial to a select committee. It was thus referred. The select committee were Messrs Tuley, F. Pino and Jose E. Ortiz.

The memorial of the Probate Judge of the county of Taos, asking an amendment of the laws respecting gambling, was referred to the committee on the Judiciary.

Mr. Otero, from the special committee to whom were referred the memorials of the Sheriffs of the counties of San Miguel and Bernalillo, reported in favor of the relief of the petitioners; provided, the Sheriff of Bernalillo county shall first settle his accounts with the Auditor.

Mr. Pino moved to take up the memorial of Rafael Gutierrez; agreed to; but subsequently withdrawn.

Reports of Committees:  
Mr. Tuley, from the special committee to whom was referred the petition of certain citizens of Taos county, respecting depredations of the United States troops, reported in favor of the petitioners, and recommended action on the subject.

Mr. Tuley, from the select committee to whom was referred a bill for the payment of Messrs Russell and Blumner for having copied and translated the Journal of the House of the last session, reported the same back to the House, and recommended its passage.

Messrs F. Pino and C. Ortiz opposed the adoption of the report; Messrs Vigil, Tuley and Wheaton urged its adoption on the grounds of common justice. After discussion, the report was adopted.

By leave, Mr. F. Pino moved that the bill be translated; agreed to.

Mr. C. Ortiz, from the committee on engrossed bills, reported the bill relative to civil officers as engrossed. Mr. Wheaton moved a reference of the bill to committee of the whole; not agreed to. He then moved its reference to the committee on the revision of the laws; agreed to.

Mr. Tuley, from the committee on the Judiciary, to whom was referred the bill in reference to trade with the Indians, reported the same without amendment, and recommended its passage; report agreed to. The bill was ordered to a third reading, and passed.

Mr. C. Ortiz, from the committee on engrossed bills, reported the bill providing for taking the depositions of witnesses in all cases as engrossed.

House adjourned to 5 o'clock in the afternoon.

### EVENING SESSION.

House met. Mr. Sena y Romero introduced a resolution, calling upon the Treasurer of the Territory to report to the House the amount of money in the treasury; the resolution was adopted.

Mr. F. Pino in the chair.

Mr. Tuley, from the committee on the Judiciary, to whom was referred the bill providing for the holding of special terms of the United States District Court for the trial of criminal cases, by giving ten days' notice, reported the same without amendment, and recommended its passage; the report was adopted.

Mr. Wheaton introduced a resolution, calling upon the Secretary of the Territory for a statement of how much of the money appropriated for public buildings, had been expended for that purpose; adopted.

Mr. Tuley introduced a bill relative to Grand Juries; ordered to be translated.

Mr. Wheaton introduced a bill to form a board of Trustees for the Territorial Library; ordered to be translated.

Mr. Tuley, a bill in regard to defalcation of civil officers; ordered to be translated.

Mr. Otero moved that the Interpreter have leave of absence; not agreed to.

Second reading of Bills:  
An act amending an act respecting Weights and Measures, was read a second time, and referred to the committee on the Judiciary.

Mr. Gonzales of San Miguel, from the committee on Counties, to whom was referred the bill changing the county-seat of the county of Socorro, reported adversely to the passage of the bill. Mr. Baca y Pino moved that the report be disagreed to, and exposed the principles which actuated certain members of the House. The report was adopted.

Mr. Tuley asked leave to introduce a bill; leave was refused.

The bill providing for the raising of a fund for the support of Common Schools, by a poll tax of \$1.50 on each adult citizen, (Mr. F. Pino's bill,) was read a third time, and referred to the committee on Education.

Mr. F. Pino moved that the House go into committee of the whole, to take into consideration the petition of Rafael Gutierrez, contesting the seat of Mr. Miguel Otero of Valencia. After discussion by C. Ortiz for, and Messrs Wheaton, Valdez and Gallegos of Taos against, the motion was agreed to 14 to 8.

Mr. Craddock moved a call of the House; Mr. F. Pino called him to order; the chair decided the motion to be in order. Mr. Pino appealed from the decision of the chair; the decision of the chair was not sustained.

Mr. Otero moved a call of the House. The chair declared the motion out of order, according to the decision of the House just made. Mr. Otero appealed from the decision of the chair; the decision of the chair was not sustained.

[The reporter is at a loss to account for this change of opinion, in two immediately succeeding votes, by the House.]

A call of the House was ordered.

In the absence of the Sergeant-at-Arms, Mr. Tuley moved an adjournment till to-morrow morning at 10 o'clock; not agreed to. The absent members having been brought in, the House went into committee of the whole, Mr. Chaves of Valencia in the chair.

The petition of Rafael Gutierrez, contesting the seat of Mr. Otero, was read, together with notice of contest, and certificate of date of baptism of Mr. Otero.

Messrs F. Pino, C. Ortiz and Sena y Romero opposed the motion; Messrs Wheaton, Gonzales of Taos, Craddock and Tuley supported it in a long discussion. The arguments of the last named gentlemen were, that the contest was not legally brought; that the baptismal certificate was not legal evidence, as no declaration had been made under oath before the proper civil officer, that it was a true copy of the original; and that, therefore, there was no legal evidence before the committee that Mr. Otero had not the legal age to qualify him as member of the House; that Mr. Otero had been elected by a large majority of the people of his county; that the will of the people thus declared, must be respected, etc.